

that the Department of Defense may possess such data does not in itself provide a basis for control of such data pursuant to this part.

(3) Introduce any controls on the dissemination of scientific, educational, or other data that qualify for General License GTDA under 15 CFR 379.3 of the EAR (see § 250.7) or for general exemptions under 22 CFR 125.11 of the ITAR (see § 250.8).

(4) Alter the responsibilities of DoD Components to protect proprietary data of a private party in which the Department of Defense has “limited rights” or “restricted rights” (as defined in 32 CFR 9-201(c) and 9-601(j) of the DoD Acquisition Regulation, or which are authorized to be withheld from public disclosure under 5 U.S.C. 552(b)(4).

(5) Pertain to, or affect, the release of technical data by DoD Components to foreign governments, international organizations, or their respective representatives or contractors, pursuant to official agreements or formal arrangements with the U.S. Government, or pursuant to U.S. Government-licensed transactions involving such entities or individuals. In the absence of such U.S. Government-sanctioned relationships, however, this part does apply.

(6) Apply to classified technical data. After declassification, however, dissemination of such data that are within the scope of § 250.2(a)(1) is governed by this part.

§ 250.3 Definitions.

(a) *Qualified U.S. contractor.*¹ A private individual or enterprise (hereinafter described as a “U.S. contractor”) that, in accordance with procedures established by the Under Secretary of Defense for Research and Engineering, certifies, as a condition of obtaining export-controlled technical data subject to this Directive from the Department of Defense, that:

(1) The individual who will act as recipient of the export-controlled technical data on behalf of the U.S. contractor is a U.S. citizen or a person admitted lawfully into the United States for permanent residence and is located in the United States.

(2) Such data are needed to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, or for other legitimate business purposes² in which the U.S. contractor is engaged, or plans to engage. The purpose for which the data are needed shall be described sufficiently in such certification to permit an evaluation of whether subsequent requests for data, pursuant to § 250.5(d)(2) are related properly to such business purpose.

(3) The U.S. contractor acknowledges its responsibilities under U.S. export control laws and regulations (including the obligation, under certain circumstances, to obtain an export license prior to the release of technical data within the United States) and agrees that it will not disseminate any export-controlled technical data subject to this part in a manner that would violate applicable export control laws and regulations.

(4) The U.S. contractor also agrees that, unless dissemination is permitted by § 250.5(h), it will not provide access to export-controlled technical data subject to this part to persons other than its employees or persons acting on its behalf, without the permission of the DoD Component that provided the technical data.

(5) To the best of its knowledge and belief, the U.S. contractor knows of no person employed by it, or acting on its behalf, who will have access to such data, who is debarred, suspended, or otherwise ineligible from performing on U.S. Government contracts; or has violated U.S. export control laws or a certification previously made to the Department of Defense under the provisions of this part.

(6) The U.S. contractor itself is not debarred, suspended, or otherwise determined ineligible by any agency of the U.S. Government to perform on

¹Canadian contractors may be qualified in accordance with this part for technical data that do not require a license for export to Canada under 22 CFR 125.12 of the ITAR and 15 CFR 379.4(d) and 379.5(e) of the EAR submitting an equivalent certification to the U.S. Department of Defense.

²This does not require a contract with or a grant from the U.S. Government.

U.S. Government contracts, has not been convicted of export control law violations, and has not been disqualified under the provisions of this part. When the certifications required by paragraphs (a) (5) and (6) of this section, cannot be made truthfully, the U.S. contractor may request the certification be accepted based on its description of extenuating circumstances.

(b) *Controlling DoD Office.* The DoD activity that sponsored the work that generated the technical data or received the technical data on behalf of the Department of Defense and therefore has the responsibility for determining the distribution of a document containing such technical data. In the case of joint sponsorship, the controlling office is determined by advance agreement and may be either a party, a group, or a committee representing the interested activities or DoD Components. (The controlling DoD office is identified on each export-controlled document in accordance with DoD Directive 5230.24.

(c) *Critical Technology.* Technologies that consist of (1) arrays of design and manufacturing know-how (including technical data); (2) keystone manufacturing, inspection, and test equipment; (3) keystone materials; and (4) goods accompanied by sophisticated operation, application, or maintenance know-how that would make a significant contribution to the military potential of any country or combination of countries and that may prove detrimental to the security of the United States (also referred to as militarily critical technology).

(d) *Other legitimate business purposes.* Include:

- (1) Providing or seeking to provide equipment or technology to a foreign government with the approval of the U.S. Government (for example, through a licensed direct foreign military sale).
- (2) Bidding, or preparing to bid, on a sale of surplus property.
- (3) Selling or producing products for the commercial domestic marketplace or for the commercial foreign marketplace, providing that any required export license is obtained.
- (4) Engaging in scientific research in a professional capacity.

(5) Acting as a subcontractor to a concern described in paragraphs (d) (1) through (4) of this section; or

(6) Selling technical data subject to this part in support of DoD contractors or in supporting of the competitive process for DoD contracts, provided such sales are limited solely to DoD contractors or potential DoD contractors who also are qualified U.S. contractors and provided such technical data are related to the purpose for which the qualified U.S. contractor is certified, or selling technical data to foreign contractors or governments overseas after receiving the required export license or approval by the U.S. Government.

(e) *Potential DoD contractor.* An individual or organization outside the Department of Defense declared eligible for DoD information services by a sponsoring DoD activity on the basis of participation in one of the following programs:

- (1) The Department of the Army Qualitative Requirements Information Program.
- (2) The Department of the Navy Industry Cooperative Research and Development Program.
- (3) The Department of the Air Force Potential Contractor Program.
- (4) The DoD Scientific and Technical Program; or
- (5) Any similar program in use by other DoD Components.

(f) *Public disclosure.* Making technical data available without restricting its dissemination or use.

(g) *Technical data with military or space application, or technical data.* Any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used or be adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(h) *United States.* For the purpose of this part, the 50 States, the District of Columbia, and the territories and possessions of the United States.

§ 250.4 Policy.

- (a) In accordance with 10 U.S.C. 140c, the Secretary of Defense may withhold